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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, **Plaintiff,** **v.** **STEVEN CARROLL DEMOCKER,** **Defendant.**	**Cause No. P1300CR20081339** **STATE'S MOTION TO RECONSIDER DENIAL OF MOTION IN LIMINE TO PRECLUDE ANONYMOUS EMAIL** **The Honorable Warren Darrow**

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Motion to Reconsider the Court's denial of the State's Motion in Limine to Preclude Any Reference to the Anonymous Email sent in June 2008 to Defense Counsel John Sears (herein after "the email"[1]). Although this Court has not issued a final ruling on the email's admissibility, the State contends that "pretrial" preclusion is appropriate and should be granted to remove this complex but unnecessary issue from the jury trial.[2] To do otherwise risks tainting the jury with highly inappropriate and inadmissible evidence.

[1] There are in fact two anonymous emails (Exhibits 1 and 2), but the second contains little information. It is the first email that is really at issue here and thus is the reason that email is often referred to in the singular in this Motion to Reconsider.

[2] In the alternative, the State requests a hearing to make a final admissibility determination on that issue so the State can seek special action relief from any negative ruling.

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FACTS AND PROCEDURAL HISTORY

On May 24, 2010 the State filed a Motion in Limine seeking to preclude any reference to the anonymous emails implicating Mr. Knapp in a prescription drug ring and pointing the finger at three unknown persons for the murder. See Exhibits 1 and 2. In its brief motion, the State argued that the emails were unreliable hearsay. Defendant objected to the preclusion and the matter was argued to this Court on June 3, 2010 before the State had an opportunity to reply. See Exhibit 3, June 3, 2010 Reporter's Partial Transcript of Proceedings, Motion in Limine Regarding Anonymous E-Mail.

During argument this Court acknowledged that the email was in fact hearsay, stating, "I recognize the clear hearsay issue in connection with this [email] and the contents. And the reason why it is being sought to be admitted would be for the contents of the document itself." Exhibit 3 at 2, line 25 through 3, line 3. The Court inquired of defense counsel, "What about foundation and hearsay objections?" to which defense counsel replied that "[i]t doesn't matter in this case" and that hearsay and foundation arguments "go to the weight of it." Id. at 4, line 23 through 5, line 4. The Court reiterated again that the email was clearly hearsay, and inquired how Defendant was going to lay the foundation for admission since the email was sent directly to defense counsel John Sears and no one else. Defense counsel stated that he planned on calling the Investigator from the County Attorney's Office, who investigated the email at his request, to lay the foundation. Id. at 5, lines 10-19. See Exhibit 4, Yavapai County Attorney's Office Supplementary Report.

During argument defense counsel relied heavily on his selective misinterpretation of the recent case of *State v. Machado*, --- P.3d ---, 2010 WL 1713952 (App. Div. 2, April 29, 2010) ("*Machado*"). Defense counsel argued that the email should be allowed to come in

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despite the hearsay and foundation objections because the email was more or less the starting point for one of Defendant's third-party culpability defenses. Id. at 8, lines 7-13. Defense counsel took the ultimate leap by arguing that *Machado* stands for the proposition that any evidence a defendant wants to present regarding a third-party culpability defense should be admitted without regard to even the most basic rules of evidence regarding reliability and trustworthiness. Specifically, Defense Counsel argued that "*Machado* takes us further down the road and tells us that if 404(b) does not apply, then there is no burden on the defendant to prove by any standard of evidence that the acts alleged to be part of this third-party culpability defense actually took place." Id. at 8, line 24 through 9, line 3. After confirming that the parties do in fact know from where and when the emails were sent, but not by whom, the Court denied the State's Motion in Limine to preclude the email. Id. at 11, lines 8-14.

This Court appeared to rely heavily upon defense counsel's selective misinterpretation of *Machado* when near the end of the argument and just prior to ruling against the State, the Court inquired of the State: "Doesn't *Machado* only require the 403 analysis, not the hearsay analysis?" Id. at 10, line 24-25. As shown below, this is an incorrect understanding of *Machado*, but one argued by defense counsel.

Later in the day, the State asked the Court to reconsider its ruling concerning the email. Id. at 12, lines 6-8. The Court pointed out, and defense counsel agreed, that none of the cases on which Defendant relied (*State v. Gibson*, 202 Ariz. 321, 44 P.3d 1001 (2002), *State v. Machado*, 2010 WL 1713952 or *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)) directly addressed the issue of hearsay and the applicability of the hearsay rule to third-party culpability evidence. Id. at 14, lines 18-21. This too, is an inaccurate understanding of *Machado*, as will be pointed out below. After hearing argument,

the Court stated, "I will think about it, Mr. Butner. At this point, [my ruling denying your motion in limine] stands as it is." Id. at 18, lines 20-21.

ARGUMENT

It is obvious from the record that the Court realizes that the emails in question are clearly hearsay. Nevertheless, it denied the State's Motion in Limine to preclude the defense from introducing the emails during the trial based upon what the State believes was a misinterpretation of *Machado*, a misinterpretation that was argued by defense counsel.

The State acknowledges that a defendant has a right to introduce evidence regarding third-party culpability and if an exception is met, the proffered evidence may be hearsay. Because evidence of third-party culpability is easily fabricated, however, such evidence should only be admitted if it has some measure of reliability.

A. Admission of hearsay evidence.

The person who sent the email is unknown and will not be testifying at trial. Therefore, the declarant is unavailable and statements made in the email are hearsay. Rule 801, Ariz. R. Evid. The parties and the Court are in agreement on this issue.

"Hearsay is not admissible except as provided by applicable constitutional provisions, statutes, or rules." Rule 802, Ariz. R. Evid. Defendant did not claim that there are any exceptions to the hearsay rules applicable to the email. Rules 803 and 804, Ariz. R. Evid. Therefore, the email is not admissible. Nevertheless, Defendant claims, and presumably the Court agrees, that *Machado* allows the admission of hearsay statements without regard to the reliability or trustworthiness of the statements. *Machado* does not provide support for such a far-fetched conclusion.

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B. *Machado* requires that the proffered evidence be reliable.

Defendant claims that *Machado* stands for the proposition that a defendant does not need to abide by any evidentiary rules when submitting evidence in support of a third-party culpability defense. TR 6/3/10 at 8, line 24 through 9, line 3. It appears that the Court believes that *Machado* only requires a Rule 403 analysis but not a hearsay analysis. Id. at 10, lines 24-25. However, those arguments are belied by the *Machado* Court's various discussions of the core requirement that the proffered evidence must be reliable and abide by the underlying principles behind the Rules of Evidence.

For example, in its discussion of the U.S. Supreme Court decision in *Chambers v. Mississippi* the *Machado* Court stated:

> [T]he defendant's constitutional right to present a defense trumped the state rule [of evidence] when the proffered statements had **all the circumstantial hallmarks of reliability underlying traditional exceptions to the general rule precluding hearsay**.

Machado at ¶ 13 (referring to *Chambers v. Mississippi*, 410 U.S. 284, 300-02, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), emphasis added). The *Machado* Court, after analyzing applicable United States and Arizona Supreme Court cases, further found:

> These cases stand for the proposition that, when assessing the admissibility of evidence proffered by an accused, the Sixth Amendment requires that courts be guided **not only** by the express terms of the pertinent **rules of evidence**, but, in applying those express terms, by the **core principles of relevance and reliability** that underlie them.

Machado at ¶ 13 (emphasis added).

There is absolutely no reference in *Machado* that the Rules of Evidence do not apply when a third-party culpability defense is asserted. Rather, the Court stated:

> Our supreme court has held the normal hearsay rules apply to third-party culpability evidence, and these rules do not violate a defendant's due process

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> rights--as long as they are not applied mechanistically as in *Chambers* [*v. Mississippi*].

Machado at ¶ 40 (citation omitted). The main inquiries into whether or not hearsay should be admitted are the relevancy and the **reliability** of the evidence.

The anonymous phone call in *Machado* was admitted under the hearsay exception of statement against interest. Rule 804(b)(3), Ariz. R. Evid. That is to say, the caller admitted during his phone call that **he** killed the victim. In this case, the anonymous emailer did not make any statement against his interest, but rather against third parties' interests.

The focus of the declaration against interest exception to the hearsay rule is the basic trustworthiness of the declaration. The essence of the exception for statements against interest is that the declarant must believe the statement could actually subject the declarant to liability. This is what establishes the trustworthiness of the statement. Here, the unknown email sender could not reasonably have believed he/she could be subjected to any criminal liability as a result of his email. "If you know your confession can convict you it is, for that reason, against your penal interest and credible. If you know your confession cannot convict you it is, for that reason, not against your penal interest and not credible." *People v. Sanders*, 221 Cal.App.3d 350, 379, 271 Cal.Rptr. 534 (1990).

Contrary to the Court and Defendant's assertions, the *Machado* Court considered the reliability of the anonymous incriminating phone call in that case, stating:

> ¶ 41 Here, the declarant was unavailable because his identity was never definitively confirmed, and Jonathan had expressed an intention to invoke his right against self-incrimination if called as a witness.[FN15] And, although the declarant did not identify himself, the contents of his statements clearly tended to subject him to criminal liability insofar as the caller openly maintained he had shot Rebecca. The caller also knowingly exposed his voice and features about himself and his motivations that would create a risk that he could be identified from his call. Indeed, as discussed, the state intensified its investigation of Jonathan precisely because it believed he was the declarant

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based on certain features of the confession. In short, the anonymous declarant was not only aware that his confession tended to subject him to criminal liability--this is undoubtedly why he did not identify himself--but the statements actually had the ultimate effect of focusing law enforcement's efforts on the investigation of the presumed declarant.

¶ 42 As discussed above, and as asserted by the state when seeking a warrant based on the telephone call, the contents of the confession corroborated its trustworthiness. The caller described accurate details about the killing that were not public knowledge.[FN16] Moreover, neither the fact that such a call had been made nor the contents of that call were disputed. Both the victim's mother and aunt had heard the conversation. Therefore, the policy behind the heightened standards for admitting exonerating hearsay--namely, avoiding fabrication--was inapplicable to this evidence. *See* Fed.R.Evid. 804(b)(3) Advisory Committee Note ("The requirement of corroboration should be construed in such a manner as to effectuate its purpose of circumventing fabrication."); *see also Chambers,* 410 U.S. at 302, 93 S.Ct. 1038 (admitting evidence of third party's confession, notwithstanding contrary state evidentiary rule, because circumstances of confession suggested trustworthiness of statements and broader policy goals of evidentiary rules pursued by its admission).

¶ 43 The trial court's comments suggest it questioned the reliability of the telephone call in that it "would be unfair to present [evidence of the call] without identification." But anonymous telephone calls are routinely admitted as evidence of guilt against parties when circumstantial evidence establishes the defendant had made the call. *E.g., State v. Grube,* 126 Idaho 377, 883 P.2d 1069, 1076 (1994); *State v. Croscup,* 604 S.W.2d 69, 71 (Tenn.Crim.App.1980); *Bevers v. State,* 811 S.W.2d 657, 662-63 (Tex.Ct.App.1991). And, our supreme court has instructed that, when determining the admissibility of third-party hearsay statements under Rule 804(b)(3), judges must be careful not to "bootstrap [themselves] into the jury box via evidentiary rules." *LaGrand,* 153 Ariz. at 28, 734 P.2d at 570. Once the anonymous confession satisfied the test for determining admissibility under Rule 804(b)(3), any continuing challenges to the statement's accuracy or the caller's identity, were for the jury to decide. *State v. Lopez,* 159 Ariz. 52, 55, 764 P.2d 1111, 1114 (1988) ("In determining admissibility under Rule 804(b)(3) ... the trial judge does not determine questions of credibility. That is a jury function.")

¶ 44 Based on the corroborating circumstances articulated above, reasonable jurors readily could have found the confession was true and that it had been made by Jonathan or, at minimum, not by Machado. *See LaGrand,* 153 Ariz. at 28-29, 734 P.2d at 570-71 (setting forth deferential test for admissibility of third-party confessions in conformity with *Chambers* requirement that rules not be applied "mechanistically"). Because the evidence therefore was admissible

as a statement against penal interest under Rule 804(b)(3), the trial court erred in precluding it.

Machado at ¶¶ 41-44.

C. The email is not reliable.

The State agrees that the email, which would suggest that someone other than Defendant committed the murder, is relevant to his defense. However, the evidence must also be reliable.

"Reliable" evidence "is evidence which is trustworthy and connotes that type of dependency which underlies the generally recognized exceptions to the hearsay rule." *State v. Stotts*, 144 Ariz. 72, 82, 695 P.2d 1110, 1120 (1985). The Arizona Supreme Court has the "exclusive constitutional authority 'to make rules relative to all procedural matters in any court.' Ariz. Const. Art. 6, § 5(5)...." *State v. Robinson,* 153 Ariz. 191, 197, 735 P.2d 801, 807 (1987); *Slayton v. Shumway,* 166 Ariz. 87, 89, 800 P.2d 590, 592 (1990). This includes the exclusive power to make evidentiary rules. *Barsema v. Susong,* 156 Ariz. 309, 314, 751 P.2d 969, 974 (1988). "Hearsay is admissible only if it falls within a recognized exception." *State v. Robinson,* 153 Ariz. at 196, 801 P.2d at 806. The many exceptions are listed in Rules 803 and 804, Ariz. R. Evid. Rules 803 and 804 list thirty-one specific hearsay exceptions. The purpose of these exceptions is to further the truth-finding process by admitting trustworthy hearsay statements that are supported by particularized guarantees of trustworthiness. *Robinson,* 153 Ariz. at 197, 735 P.2d at 807 (citations omitted).

Defendant never claimed that the email falls into any of the recognized exceptions. Accordingly, the hearsay statement cannot be deemed reliable and may not be admitted at trial.

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D. The email is not admissible under the "catch all" exception.

The State anticipates that Defendant may now argue that the email falls into the "catch all" exceptions to the hearsay rule. Rules 803(24) and 804(b)(7), Ariz. R. Evid. A case which analyzed the admission of hearsay evidence under the "catch all" exception is *State v. Ruelas*, 165 Ariz. 326, 798 P.2d 1335 (App. 1990). *Ruelas* also requires that the proffered evidence has sufficient guarantees of trustworthiness by "looking at each case individually and determining the reliability of the particular evidence based on the circumstances that existed at the time of the event." *State v. Ruelas*, 165 Ariz. 326, 331, 798 P.2d 1335, 13450 (App. 1990). Factors to be considered include "the presence of an oath or cross-examination; the ability of the declarant to perceive clearly; the amount of time after the event; whether the statement was corroborated; whether the statement was self-incriminatory in nature; whether the statement was ambiguous or explicit; and whether multiple levels of hearsay existed." *Ruelas*, 165 Ariz. at 331, 798 P.2d at 1340.

No presence of oath or cross-examination exists as the sender of the email is still unknown. It is unknown whether the declarant was one of the three alleged murderers and was able to perceive the event. The email was not sent for almost a year after the murder, giving the declarant plenty of time to fabricate. The statements were not self-incriminatory but pointed to three unknown persons. The statements were ambiguous and very hard to follow. The story of which person(s) had asps and the axe handle was unclear. It is impossible to tell when the person retrieved the axe handle which Defendant claims the victim hid under her bed. In short, the "story" is virtually impossible to follow. The declarant claims that the reason for the murder was that "Knapp was running his mouth to

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Kennedy about a prescription drug deal he was in." There is no information how declarant might know this, but in any event it is hearsay.

The email cannot be admitted under any "catch all" exception to rules precluding the admission of hearsay statements.

E. The email is not admissible under constitutional standards.

Although proffered evidence is not admissible under the Rules of Evidence, if it nonetheless bears sufficient indicia of trustworthiness, its exclusion would violate due process principles. *Chambers, supra*, 410 U.S. at 302, 93, S.Ct. at 1039, 35 L.Ed.2d at 313. However, critical to the outcome in *Chambers* was the Court's determination that despite Mississippi's state evidentiary rules, the hearsay statements involved "were originally made and subsequently offered at trial under circumstances that provided *considerable assurance* of their reliability." 410 U.S. at 300, 93 S.Ct. at 1038 (emphasis added). The email statements in this case are not reliable, and even under federal constitutional standards should not be admitted.

In a habeas corpus proceeding, the Ninth Circuit Court of Appeals applied a five-part balancing test to determine whether an evidentiary rule precluding hearsay evidence violated the Due Process Clause or the Sixth Amendment right to compulsory process. Those factors included:

> (1) the probative value of the excluded evidence on the central issue; (2) its reliability; (3) whether it is capable of evaluation by the trier of fact; (4) whether it is the sole evidence on the issue or merely cumulative; and (5) whether it constitutes a major part of the attempted defense.

Chia v. Cambra, 360 F.3d 997, 1004 (C.A. 9 (Cal.), 2004) (citing *Miller v. Stagner*, 757 F.2d 988, 994-94 (C.A. 9 (Cal.), 1985)). As noted, the reliability of the statement is one of the most important aspects of a constitutional analysis as well as a state evidentiary rule analysis.

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Defendant argued that the email is "the starting point" of his third party culpability claim that other persons committed the murder, not with a golf club but with asps and an axe handle. Defendant has hired experts to substantiate his theory, who have compared the victim's injuries with the blunt end of an axe handle and a portion of an asp. The email evidence arguably goes to the central issue of who committed the murder. Since hiring the experts, the email is not the sole evidence on the issue, and any other reliable evidence substantiating this third-party culpability claim will likely be admissible.

However, similar to the Arizona standard, the federal analysis also requires that the evidence be reliable. As noted, any reliability in regards to the email is non-existent.

F. *Machado* is distinguishable in other important respects.

Machado sought to introduce nine specific pieces of evidence which would tend to show that someone other than he, i.e., one very specific person named Jonathan, committed the murder. In this case, after introduction of this anonymous email, there are now three additional unknown persons who allegedly perpetrated the crime.

The anonymous phone call made to the victim's family after the murder (*Machado*) is similarly distinguishable from the anonymous email sent here. In that case, there was an actual telephone call placed to the victim's mother and overheard by the victim's aunt. The family members could hear that the person who made the call sounded like a "well-spoken" young, white male. *Machado* at ¶ 9. "That person **confessed** to the shooting, said he knew the family but did not expect them to remember him, gave a reason for the killing consistent with the threats Jonathan previously had made to Rebecca, referred accurately to non-public details of the crime and funeral, and **apologized** for the murder, which he claimed had been accidental." Id. (emphasis added). In this case, no one can identify whether the email sender

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was male or female, young or old, related to or acquainted with Defendant, or an uninvolved stranger. The person did not confess to the murder but merely pointed the finger at three unknown individuals. The information given was inconsistent with any other evidence obtained to date. While the emailer was aware of particulars of the crime and the crime scene, that information could have easily been obtained from Defendant, his daughters or any other person who had been to the victim's home previously and read the newspapers over the course of the past year. Essentially, the information was in the public domain. No "secret" information was revealed.

In both *Machado* and this case, additional investigation was conducted as a result of the anonymous communication. However, the additional investigation performed as a result of the email was performed at defense counsel Sears's request. He specifically asked the County Attorney's Office to investigate both the "voice in the vent" and the email evidence without involving the Yavapai County Sheriff's Office. See Exhibit 4. Of course, as defense counsel is aware, the investigation into the email "went dry" because defense counsel Sears held on to the email for so long the sender of the email could no longer be identified on the internet café surveillance videotape.

As to any guarantee of trustworthiness under Rule 804(b)(7), there is no evidence to suggest that the declarant's theory is even plausible.

First, the declarant claims that the victim was beaten by two male assailants, one armed with an asp and the other armed with an axe handle. The photographs of the victim's injuries and the pretrial interviews of the medical examiner demonstrate the victim's injuries are consistent with a single instrument. The declarant further states that the asp used by one of the assailants was left at the crime scene and retrieved from inside the victim's home the

following night. No bloody asp was observed by any of the numerous officers who searched the residence after the murder and no trace of blood from a bloody asp was located either. The declarant states that the axe handle was thrown over the fence and retrieved the following day. A thorough search of the area around the victim's residence was conducted and no axe handle was found.

There is also no evidence that Mr. Knapp was involved in any prescription drug ring and that the victim was killed because she knew about his involvement. Hearsay that "raises nothing more than self-serving suspicion of third party involvement" is insufficient to support a third-party culpability defense. *State v. Hoskins*, 199 Ariz. 127, 144, 14 P.3d 997, 1014 (2000) (citing *State v. Fulminante*, 161 Ariz. 237, 252, 778 P.2d 602, 617 (1988)).

CONCLUSION

As Defendant admits, the authenticity and accuracy of the information contained in the email cannot be verified. An uncorroborated statement by an unknown individual cannot be deemed reliable. Pursuant to Rule 801(a) and (c), Ariz. R. Evid., the content of the email is hearsay. No exception to the hearsay rule allowed by Rules 803 or 804, Ariz. R. Evid. or federal constitutional rule, would allow for the admission of such unreliable hearsay evidence. For the foregoing reasons, the State requests that this Court reconsider its prior ruling and order that Defendant is precluded from referencing the anonymous email at trial.

RESPECTFULLY SUBMITTED this 15th day of July, 2010.

Sheila Sullivan Polk,
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COPIES of the foregoing delivered this 15th day of July, 2010, to:

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Subject: <no subject>
Date: Friday, June 19, 2009 2:29 PM
From: Anonymous Anonymous <a4b9c4d5@gmail.com>
To: <John.Sears@azbar.org>
Cc: <Joe.Butner@azbar.org>

I can't tell you who I am, but I can tell you what really happened the night Kennedy was killed.
Knapp was running his mouth to Kennedy about a prescription drug deal he was in. Two men and one woman were sent to do them both. It was going to be a home invasion gone bad. Knapp and Kenedy used to drink together at night in her house. The 2 men would take them if they were together and the woman would be out front. If Knapp was in his apt, one man would take Kenedy and the woman would take Knapp and one man would be out front. the Two men thought Kennedy and knapp were together but when they went into the back bedroom they were wrong. Kennedy was on the phone not talking to Knapp. One man started to leave but they all ran into eachother in the hall outside her bedroom. She tried to run out a side door but one man got her with an asp. She didn't stay down and there was a fight. The 2nd man had an axe handle he from her bedroom instead of his asp. When it was over he threw it over the fence. THey had to leave quickly because she had been on the phone. They couldn't finish arranging the house. They also left behind one guys asp. They tried to go back for it but the cops were already there. 1 Man left and the other man and woman stayed waiting for a decision about Knapp. word came to walk away from knapp but they stayed and the next night walked back into the house and got the asp. They also found the axe handle they used and got rid of it. Knapp was not killed by any of the men or woman. This wasn't one crazed man with a golf club. The people you're looking for are major prescription drug suppliers in phx connected to mexico canada and some other off shore operation. Thats all I can say.

Exhibit 1

Subject: forward
Date: Friday, June 19, 2009 2:35 PM
From: Anonymous Anonymous <a4b9c4d5@gmail.com>
To: <john.sears@azbar.org>
Conversation: forward

please forward it to the prosecutors, I don't have their email and they need to read it more than anyone.

Exhibit 2

COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA, Plaintiff, vs. STEVEN CARROLL DEMOCKER, Defendant.	No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
THURSDAY, JUNE 3, 2010
8:22 A.M.

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

MOTION IN LIMINE REGARDING ANONYMOUS E-MAIL

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

Exhibit 3

JUNE 3, 2010
8:22 A.M.

MOTION IN LIMINE REGARDING ANONYMOUS E-MAIL

APPEARANCES:
FOR THE STATE: MR. JOE BUTNER AND MR. JEFF PAUPORE.
FOR THE DEFENDANT: MR. JOHN SEARS, MR. LARRY HAMMOND AND MS. ANNE CHAPMAN.

THE COURT: I had a couple of issues that you may need to have decisions on before we get to the opening statements.

State filed a motion in limine with regard to an anonymous e-mail. I received a response, as well. And I think it is something we ought to discuss at this point, and probably given that there may be reference by one side or the other to that.

Mr. Butner or Mr. Paupore.

MR. BUTNER: Judge, it is clearly a hearsay document. We don't know who it came from. It is anonymous in origin. It was investigated, and we never could find out who did it. We investigated Mr. DeMocker's statements of how it may have originated from somebody in the jail that he had conversation with through the jail vents. We were never able to find out that kind of information or validate this e-mail from any source, so to speak.

THE COURT: I recognize the clear hearsay

issue in connection with this and the contents. And the reason why it is being sought to be admitted would be for the contents of the document itself.

MR. BUTNER: But there is just no foundation for it.

THE COURT: Tell me about how you see *Gibson* and *Machado* relating to that?

MR. BUTNER: Judge, I understand that the defense has an argument that this somehow would play into their defense of third-party culpability, but the Rules of Evidence still are in place in this case and all other criminal cases. And this is basically a shot from out of the dark with no adequate foundation, unreliability written all over it. It could have been something concocted by anybody, so to speak. That is the whole point. It could have been concocted.

THE COURT: What does *Machado* say about that?

MR. BUTNER: I think it says the Evidence Rule still requires foundation. And it is still hearsay, so it should not be admissible.

THE COURT: Mr. Sears.

MR. SEARS: Thank you, Your Honor.

First, I don't want to lose sight of the fact that this motion is untimely, without question. The State has not filed --

THE COURT: But it saves an objection at the time of the proffer of the evidence, the purported proffer of the evidence which would have to be considered at the time that that is made. Rather than approach it --

MR. SEARS: This is a year old, Your Honor. The anonymous e-mail is very nearly a year old. The investigation was completed by the Yavapai County Attorney's Office regarding this last summary.

THE COURT: I am considering it, so if you would move on to that issue.

MR. SEARS: Well, let's talk about *Machado* and *Gibson* and what they say. *Gibson* explained *Fulminante*. *Fulminante* has been the law in Arizona for 32 years. *Gibson* has been the law in Arizona for eight years.

The only requirement for third-party culpability evidence is that it is relevant and that it is not 403 prejudicial. There is no requirement, contrary to the State's assertion, that it be proved beyond a reasonable doubt, that it be proved to any standard. *Machado* says 404(b) does not apply to that evidence for good reason. This is all grounded in the defendant's Sixth Amendment right to present a defense.

THE COURT: What about foundation and hearsay objections?

MR. SEARS: It doesn't matter in this case.

The argument is that this information was submitted. The arguments that the State makes that it lacks foundation, that it is hearsay, are simply arguments that go to the weight of it. They had decided, for some reason after they tried to run this to ground, that it must be a fabrication. That is consistent with the way in which the State has looked at any evidence that doesn't point to Mr. DeMocker. They dismiss it out of hand. They refuse to accept it as a possible alternative.

THE COURT: It is clearly hearsay. What is your proposal for how you lay the foundation for it? Are you going to testify? Who is testifying with regard to that?

MR. SEARS: I would put on Detective Randy Schmidt, if the State doesn't call him. Detective Schmidt is the one that investigated this. He wrote a 15-page supplemental report. He conducted the actual investigation. He conducted the investigation into the authenticity on the document. He traced the document to an Internet cafe in North Central Phoenix.

THE COURT: My understanding, for purposes of the record, is an e-mail comes to your office.

MR. SEARS: It comes to me, and it was addressed at the same time to Mr. Butner, with an incorrect e-mail address to Mr. Butner. A second, briefer e-mail came to me from the same IP address, saying that it bounced back,

would I forward it to Mr. Butner, which is exactly what we did.

The State has investigated this matter and concluded that they know where this was sent from. They know the date it was sent from. They know the time it was sent from. They know exactly how long the person using the computer in the Internet cafe was on-line. They know what the person did. They created this anonymous e-mail account. They searched for my address, for Mr. Butner's address, for photographs of us, then they composed and sent these e-mails. They paid cash. They couldn't be identified. The trail went cold at that point.

They also investigated possible sources inside the jail and concluded that they could not identify the person that spoke to Mr. DeMocker inside the jail with similar information exactly one month before. That is the foundation for all of this.

It is -- if you look at it this way, how is this any different than the allegations against Mr. DeMocker? The allegations against Mr. DeMocker are entirely circumstantial. They are not based on --

THE COURT: They are not subject to a hearsay objection.

MR. SEARS: Well, actually, much of it is, but we have had that hearing before. But if this information

comes -- looking at the low bar set by *Gibson*, which was lowered further by *Machado*, how can we say that because Mr. DeMocker doesn't have a witness to come forward and say "I killed Carol Kennedy," or "I will tell you how I did it," he is not permitted to present this third-party culpability defense.

He has this information. There are inherent details inside this e-mail that even the investigator conceded show that the person had some degree of familiarity with the inside of the victim's home beyond what was available in the public record. There are aspects of the allegations in this e-mail that are consistent with our investigation of the physical injuries suffered by Carol Kennedy.

It involves Mr. Knapp, but it doesn't say that Mr. Knapp is the killer. It has a different spin on that. This is not a suggestion that Mr. Knapp killed Carol Kennedy. This is a suggestion that Mr. Knapp brought down the people that, by his conduct, brought the people that eventually killed Carol Kennedy to her house. That is the allegation in this case. It is not wild speculation. It is based on this information. It is investigated.

The State's own investigation confirms the extrinsic parts of this; mainly that there was such an e-mail, where it was sent from, the date it was sent from,

how it was created. And what you can infer from that is that the person inside the jail and the person who sent the e-mail, whether they are one and the same person, was successful in doing what they wanted to do, which was to remain anonymous. They wanted to mask their identity, and they were able to do that.

The State can argue, I suppose, that this is a fabrication or concoction of people, and that just simply goes to the weight of this evidence. But to say that Mr. DeMocker is stopped at the door from raising this third-party culpability defense because the document that creates the idea of it is in and of itself hearsay, I think does damage to both *Gibson* and *Machado*.

I think those cases stand for a different proposition. The proposition is that in Arizona as elsewhere, *Holmes versus South Carolina*, a United States Supreme Court case that teaches us about the way in which this comes in, that previous practices, the practice in Arizona between 1978, when *Fulminante* was decided, and 2002 when *Gibson* was decided, to greatly limit a defense ability to put on third-party culpability evidence is not the law, never was the law. And anyone that interpreted *Fulminante* that way was just reading it wrong.

And *Machado* takes us further down the road and tells us that if 404(b) does not apply, then there

is no burden on the defendant to prove by any standard of evidence that the acts alleged to be part of this third-party culpability defense actually took place. *Machado* explains just why. It is what I've said, that the defendant has a right to put on a defense. A defendant can't make wild utterly unsupported allegations and expect to have them considered. That is not what this is. This is information that came in a particular way.

And the suggestion will be that the police followed it to a point, gave up, dead-ended, and then decided to turn back to the idea that Mr. DeMocker must have planted this. They refuse to accept the idea that it might be true, which is a theme that you have heard in this case, and one that I expect you will hear throughout the trial in this case. That is what the police do. Every time they get a piece of evidence that doesn't fit with their story that points only to Mr. DeMocker, not only do they reject it out of hand, they try to somehow turn that into a fabrication or a construct of Mr. DeMocker or his defense.

To simply say that it is hearsay and inadmissible is looking in the wrong window, Your Honor. That is not what the law requires.

THE COURT: You concede it is hearsay, obviously.

MR. SEARS: Well, it is an out-of-court

statement by a person who is presumptively unavailable because they can't be located. The question is whether it is offered for the truth.

THE COURT: Offered for the truth of the matter asserted. Thank you.

Mr. Butner.

MR. BUTNER: Judge, you talked about a 403 analysis. It is clearly unfairly prejudicial. And the reason that it is unfairly prejudicial is because you can't find anybody to cross-examine concerning this thing. It is hearsay, classic hearsay, and it is offered for the truth of the matter asserted. We have no foundation for this document. I mean -- and it violates *Crawford*, too, in terms of having somebody to confront, to cross-examine --

THE COURT: State doesn't have a right to confrontation like the defendant does.

MR. BUTNER: I understand that, Judge, but that is what hearsay is all about, having somebody to confront and cross-examine. And Rule 802, I mean, it is clearly inadmissible. It is a hearsay document offered for the truth of the matter asserted. The declarant is unknown and unavailable. There is no foundation for it. It is prejudicial.

THE COURT: Doesn't *Machado* only require the 403 analysis, not the hearsay analysis?

MR. BUTNER: Well, you can -- no, I don't think so. I think that hearsay is still absolutely excluded. But *Machado* indicates that you also conduct a 403 analysis, and in that way it is also prejudicial. Why? Because the declarant isn't there to be cross-examined. It is an anonymous e-mail from who knows where and what, so to speak. We don't know who this person is. As I stated --

THE COURT: You know where. You don't know who.

MR. BUTNER: Yeah. Came from --

THE COURT: You know where and when, but not who.

MR. BUTNER: Right.

THE COURT: The motion in limine is denied.

MR. SEARS: Thank you, Your Honor.

(Whereupon, this portion of the motion is concluded. Further discussion was held in the p.m. session.)

JUNE 3, 2010
1:21 P.M.

THE COURT: We are a bit behind schedule, but is there any issue that you need to raise before we proceed with the defense opening?

MR. BUTNER: Judge, the State would like to re-urge or ask the Court to reconsider its ruling concerning the e-mail.

Judge, I didn't have the *Machado* case with me at the time, because I didn't realize we were going to argue that motion at that point in time, but I would urge the Court to reconsider that ruling. I don't think there is a finding as to corroborate the circumstances in this case. I don't think it is appropriate that that e-mail come in. It is prejudicial and confusing to the jury, and obviously is hearsay. So it is inadmissible from that point of view, but the other balancing test is not met.

THE COURT: Mr. Sears.

MR. SEARS: I don't have much to add to the arguments I made this morning on that.

THE COURT: This is something you are intending to discuss in the opening?

MR. SEARS: No.

THE COURT: I will take you up on that, and I will preclude you from discussing it in the opening. I will

think about it, Mr. Butner. I appreciate if you are not going to talk about it in your opening, it is not an issue that I need to address momentarily.

MR. SEARS: Your Honor, this is concerning to me. I can't even count the number of times the State has been told in advance that something would be argued, and come to court and say, oh, we forgot. We didn't bring our files. We don't have our motion.

MR. BUTNER: We weren't told that.

THE COURT: I said I would discuss that issue before we got to the point of the opening statements, though.

Nonetheless, let's address this specific issue, if you would.

MR. SEARS: The specific issue on this is well established. *Machado* takes *Gibson* to another level. We talked about that in detail. *Machado* stands for the principle that 404(b) does not apply. If it doesn't apply, then the burden of proof is on a 404(b) evidence proponent doesn't apply to us in this case.

I explained to the Court how I would propose to get it in through the State's own investigator and the investigation he did. The arguments, as Mr. Butner is fond of saying in response to what we often urge the Court, simply goes to the weight that the jury would give to this evidence. It is not absolutely certain at this point, Your

Honor, whether this will happen.

Remember, Mr. Butner mentioned Mr. Knapp in what I thought was a passingly strange way in his opening statement and told the jury some things about Mr. Knapp. So Mr. Knapp is in this case as we go forward here.

The way in which Mr. Knapp is implicated in this e-mail is different. And perhaps it would be appropriate to give you the e-mail, Your Honor, and Randy Schmidt's lengthy departmental report, so you can see how carefully they investigated the entire matter, and what they were and were not able to conclude.

In essence, what the State is the saying is if the defendant can't prove that this happened, then they shouldn't be allowed to talk about it. And we know that neither *Gibson* nor *Machado* nor *Holmes versus South Carolina* ever put anything even approaching that burden on the proponent of the third-party culpability like Mr. DeMocker.

THE COURT: Neither do any of them directly address the issue of hearsay; do they, and the applicability of hearsay rule to this type of evidence?

MR. SEARS: No. But what we have is a very clear holding in *Machado* that says that the only Rules of Evidence that are to govern this are the relevancy rules and 403. And they specifically reject the idea that Evidence Rule 404(b) applies. And I think you can read that case

fairly, in connection with *Gibson*, and even *Fulminante* going back 32 years, and say that in Arizona there is considerable leeway to be given to a defendant's right to raise that defense. The defendant may not make some claim out of whole cloth and expect to throw it out in front of the jury, but that is not what we have here.

THE COURT: I don't think I need, by the way, a copy of the report or the copy of the e-mail. I think I understand what the issue is in connection with that.

MR. SEARS: Thank you.

The precipitating event which caused the law enforcement investigation, the circumstance, was this anonymous e-mail. But the anonymity of it is part of the story, it is part of the history. Who is this person? How did they make this note? How did the author of that e-mail, who appears to be a real flesh and blood person, come into possession of this detailed knowledge of the crime and the crime scene and the injuries, and describe the injuries in a way that are consistent with what our witnesses and even some of the State's witnesses will have to concede are true facts about the injuries to Carol Kennedy?

The possibility, as I will say in a moment in my opening, is that there were multiple instruments used, wielded by multiple assailants. Witnesses can't rule that out. The unifying theory of a golf club is a unifying

theory of a golf club, but it is not the only circumstance that would account for the injuries on this poor woman.

In addition, the linking of Mr. Knapp to these people tends to run true, because the State is possessed of information from witnesses that Mr. Knapp had a well-documented and well-acknowledged personal problem with prescription drugs. Miss Saxerud said that in her deposition. She described him as being a drug addict. In communications with other people, Mr. Knapp expressed concerns. He was receiving treatment for some form of cancer at the Mayo Clinic. There are entries in Carol Kennedy's appointment calendars where it appears she may have driven him to some of those appointments.

And so the idea that Mr. Knapp would somehow run afoul of some criminal activity involving prescription drugs is not farfetched. It is conceivable. We also know a great deal about Mr. Knapp from his own e-mail from our investigation, that he was desperate for money, that he wasn't working, that he went so far as to fall prey to the Nigerian bank scam, Internet scam, and filed a police report where he claimed he was a victim. He approached the DeMocker girls for money after the mother died, and in fact, was paid money by the estate of Carol Kennedy.

These are facts well known to the State in this case. So, the idea that Mr. Knapp would somehow

perhaps inadvertently involve himself in some very bad activities is not out of the question. So the structure of this whole story has aspects to it that were worthy of the investigation that it was given, but also worthy of discussion to this jury. It is the kind of third-party culpability evidence that can happen.

Another way to approach this, Your Honor, would be simply to cross-examine the police officers. Let's talk about leads that you did or didn't follow. What about this one? What about that one? That isn't necessarily something that engulfs third-party culpability. It is simply a question of police practices and investigation. If you ask the officers about these leads, they would have to tell you whether they investigated them or not.

And we have any number of those that we have uncovered, and information that we provided to the prosecution about other leads that we think were either not explored at all by the police, because they weren't interested in anyone but Mr. DeMocker, or were inadequately or in an incomplete manner investigated. I think that is all proper cross-examination.

MR. BUTNER: Judge.

THE COURT: Mr. Butner.

MR. BUTNER: The e-mail -- I don't believe the e-mail is listed as an exhibit by the defense.

Secondly, I am sure the Court carefully read the *Machado* opinion. There were nine separate corroborating facts that were established by the Court in that. And, I mean, it is an entirely different situation. They even had the identity of the caller who was basically unavailable because he wasn't going to be talking to anybody any further after having made this call.

It is a very, very different situation with a lot more corroborating type of evidence then a patently anonymous e-mail from an entirely unknown source. We don't have that in *Machado.* We have a very different situation in the case before the Court right now.

And the lack of corroborating circumstances makes this very confusing for the jury and totally unfairly prejudicial in this case. That is the difference.

THE COURT: Thank you.

Are you ready to proceed, Mr. Sears?

MR. SEARS: Yes, Your Honor.

THE COURT: I will think about it, Mr. Butner. At this point, it stands as it is.

MR. BUTNER: Thank you, Your Honor.

(Whereupon, these proceedings were concluded.)

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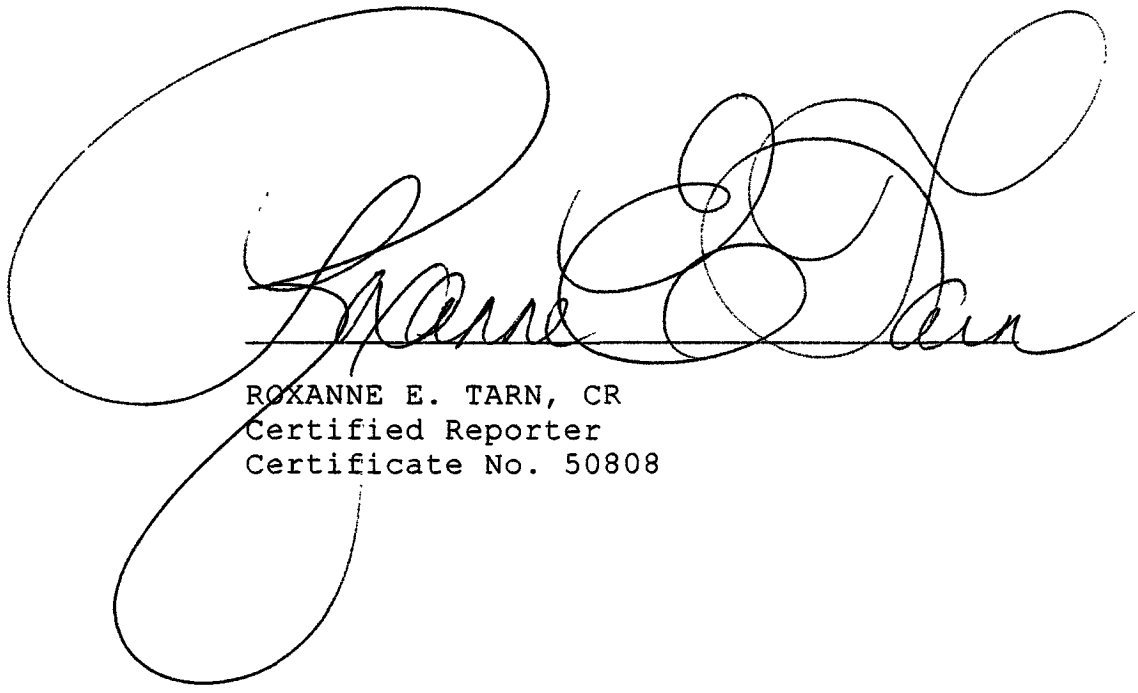
C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter in the State of Arizona, do hereby certify that the foregoing pages 1 - 19 constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 7th day of June, 2010.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808

Yavapai County Attorney's Office Supplementary Report

Criminal Complaint/Civil Complaint/Follow-Up Investigation

Type/Offense:	Homicide	Supplemental (yes)	Number: (1)
Investigation Case #:	2009-252713		
Location of Occurrence:	Prescott (In County), Yavapai County, Arizona		
Date/Time of Occurrence:	July 2, 2008		
Connect Up DR#:	YCSO 2008-029129	Date of this Supplement:	September 3, 2009
Complainant/s:	State of Arizona		
Victim/s:	Virginia Carol Kennedy		
Suspect/s-Defendant/s:	Steven Carroll DeMocker		
Investigator:	Randolph R. Schmidt, Yavapai County Attorney's Office		

Victim #1: Kennedy, Virginia Carol
W/F, DOB: 07-25-1954, DOD: 07-02-2008
7485 Bridal Path
Prescott, Arizona 86301

Suspect: DeMocker, Steven Carroll
W/M, DOB: 01-07-1954, SS#: 099-42-3468
LKA: 1716 Alpine Meadows lane, #1405
Prescott, Arizona 86301

Investigative Lead: Attorney John Sears

Investigative Lead: Clarke, Joseph H.
W/M, 09-27-1958
Owner of the Netlans Internet Café
3131 East Thunderbird Road, Suite 53
Phoenix, Arizona
Phone: 602-494-5450

Exhibit 4

On or about July 8, 2009, Deputy Yavapai County Attorney Joe Butner asked that I investigate two incidents related to Steven DeMocker and the murder of his ex-wife, Virginia "Carol" Kennedy. Attorney Butner related the following:

On July 7, 2009, Mr. DeMocker's defense attorney, John Sears, met with Yavapai County Attorney Sheila Polk and Deputy Yavapai County Attorneys Dennis McGrane (Chief Deputy) and Joe Butner at the Yavapai County Attorney's Office in Prescott. Mr. Sears wanted to disclose to the prosecuting attorneys that he had information about his client, Steven DeMocker, which tended to show that he was innocent of murdering his ex-wife Carol Kennedy. Mr. Sears wanted the prosecutors to sign a waiver before he provided the information, but the prosecutors refused to sign the waver and Mr. Sears opted to disclose his information to prosecutors anyway.

The information consisted of two reportedly separate, yet corroborating, pieces of information that were delivered to Mr. Sears and Mr. DeMocker one month apart. On May 19, 2009, an anonymous voice contacted Steven DeMocker through the air vent in his cell at the Yavapai County Jail in Camp Verde. The voice told Mr. DeMocker who had killed his wife and why she was killed, among other things. One month later, on June 19, 2009, another anonymous person sent an e-mail to Attorney John Sears through his e-mail address at the Arizona State Bar. In the e-mail, the anonymous e-mail sender related information about Carol Kennedy's murder, including who had killed her, how she was killed, and why she was killed. Both instances were remarkably similar, but were reportedly sent by different people, and Mr. Sears believed them to be authentic communications.

Attorney Joe Butner provided me with a copy of the e-mail that had been sent to John Sears on June 19, 2009, and asked me to meet with John Sears personally to discuss the two instances of communication. He also directed me to personally conduct the investigation and not to publically discuss it in an effort to maintain the integrity of the investigation.

- Joe Butner told me that Attorney John Sears was concerned about presenting this information to the Yavapai County Sheriff's Office because he did not believe that it would be taken seriously or investigated seriously. He asked that I personally investigate the information and that it remain "in-house" with the Yavapai County Attorney's Office so there are no allegations of the information not being investigated when the homicide case goes to trial.

I left messages for John Sears to call me to set up a meeting so we could discuss the e-mail and the voice in the vent. Before hearing from Mr. Sears, I sent a copy of the e-mail and the background encoded information in the e-mail to Phoenix Police Detective Eric Odenberg at the AcTIC counter terrorism center in Phoenix and asked him to analyze the background encoded information in an attempt to identify either the author of the e-mail or the location from where the e-mail was sent.

The e-mail had been sent to Attorney John Sears at his Arizona State Bar e-mail address from an anonymous Google account in the name of "a4b9c4d5@gmail.com". Detective Odenberg stated that the encoded information could not determine from where the e-mail was sent or by whom, but it did document that the e-mail was sent at 14:29:34 (2:29 pm) Mountain Standard Time on Friday, June 19, 2009. He stated that the e-mail was sent through Google and was received by the Arizona State Bar in Phoenix at the same time and date; 2:29 PM on June 19, 2009.

I met with Attorney John Sears at his office in Prescott on July 13, 2009. At that time, Mr. Sears provided me with copies of the two e-mails he had received from the anonymous sender, and copies of notes that Steven DeMocker had taken when he was contacted by the anonymous voice in the vent on May 19, 2009.

The first e-mail was sent to Mr. Sears at 2:29 PM on Friday, June 19, 2009, but he did not receive it until later in the day. He printed a copy of the e-mail the following morning, Saturday, June 20, 2009 at 9:25 AM. The second e-mail was sent by the same anonymous sender at 2:35 PM on Friday, June 19, 2009, but Mr. Sears did not receive it until later in the day when he received the first e-mail. He printed a copy of the second e-mail the following morning, Saturday, June 20, 2009 at 9:25 AM. The first e-mail was addressed to John Sears at his correct e-mail address at the Arizona State Bar and to Joe Butner at an incorrect address at the Arizona State Bar. The first e-mail was undeliverable to Joe Butner at the address that the sender had used, so the sender sent a short follow-up e-mail to John Sears asking him to forward the first e-mail to prosecutor Joe Butner.

After discussing the e-mails with John Sears, he explained to me what had occurred on May 19, 2009. Mr. Sears provided me with four pages of hand-written notes that had reportedly been written on May 19, 2009 by Steven DeMocker. The story that Mr. Sears heard from Mr. DeMocker was that in the evening hours of May 19th, Steven DeMocker was in his cell (cell #1) in Dorm N at the Yavapai County jail facility in Camp Verde. Mr. DeMocker was reading on his bunk when someone called to him through the vent system in the Dorm. Mr. DeMocker thought he possibly recognized the voice as being that of another inmate who was also incarcerated in Dorm N. The voice said, "Your ex-wife was killed by two guys from Phoenix." The voice then told Mr. DeMocker to get something to write with and to write down what he was told. Mr. DeMocker then got his pencil and paper, stood on the toilet in his cell so he would be closer to the air vent, and wrote down as quickly as he could what the voice told him.

I was unable to read what Mr. DeMocker had written, partly because the copy that I had was not clear and partly because Mr. DeMocker's writing was not clear. Mr. Sears told me that the voice had told Mr. DeMocker that he had been given the information weeks before May 19th by a friend of his who was in another Dorm, who had heard the information from his cell mate and was asked to pass it to his friend who was in Steven DeMocker's dorm. The voice told Mr. DeMocker that he was told not to tell DeMocker or anyone else what information he had until he was given the "okay" to release the information by the person who had originally provided it. The voice said that he had

been told earlier on that day, May 19th, that he should give the information to Steve DeMocker. Mr. Sears also stated that the inmates in the Verde jail use the air ventilation system as a sort of intercom system to communicate with one another from any of the 15 cells within the dorm. It was in that manner that the voice communicated with Mr. DeMocker on May 19th. Mr. Sears told me that Mr. DeMocker felt that the voice was coming from either cell number 2, 8 or 9, but he wasn't sure. I told Mr. Sears that I could not read Mr. DeMocker's handwriting and I felt uncomfortable hearing the account of the voice in the vent second-hand, and I told him that I really would prefer to talk to Steven DeMocker directly about the information, and have him tell me what he wrote. Mr. Sears agreed and we eventually set a time for an interview on July 21, 2009 at 10:00 AM.

Mr. Sears told me that the voice in the vent told Mr. DeMocker that Carol Kennedy was killed because of Jim Knapp. He said that Jim Knapp would tell Carol about his illegal drug activities while they were having their nightly drink during the evenings. John Sears said that the voice told DeMocker that Carol Kennedy was killed with and axe handle that was found in Carol's house, and Steven DeMocker confirmed that there was a splitting maul handle that DeMocker, and later Carol Kennedy, kept in the master bedroom for protection.

I took the papers that John Sears gave to me, which consisted of the notes that Steven DeMocker had taken when the voice in the vent was giving him information about the murder, and copies of the two anonymous e-mails. Copies of those items are retained in the Yavapai County Attorney's Office investigation files.

The first e-mail was addressed to John.Sears@azbar.org and Joe.Butner@azbar.org . The address for Sears is correct but the address for Butner is not correct. It appeared that the sender knew John Sears' e-mail address and just adapted it, incorrectly, for Joe Butner. I was curious why the sender did not address the e-mail to Mark Ainley, who had been the prosecutor until June 1st. The most recent news articles to June 19th still identified Mark Ainley as the prosecutor, but did mention that Joe Butner was in the courtroom during the most recent hearing. The same news article also said that John Sears and Larry Hammond were the defense attorneys in the courtroom during the most recent hearing, but of the four listed attorneys, only John Sears and Joe Butner were sent the e-mail. It appeared that whoever sent the e-mail was aware that Mark Ainley was no longer associated with the case.

The e-mail reads:[1]

"I can't tell you who I am, but I can tell you what really happened the night Kennedy was killed.
Knapp was running his mouth to Kennedy about a prescription drug deal he was in. Two men and one woman were sent to do them both. It was going to be a home invasion gone bad. Knapp and Kenedy (sic) used to drink together at night in her house. The 2 men would take them if they were together and the woman would be out front. If Knapp was

[1] Copies of e-mails are in YCAO investigation files.

in his apt, one man would take Kenedy (sic) and the woman would take Knapp and one man would be out front. the (sic) Two (sic) men thought Kennedy and knapp (sic) were together but when they went into the back bedroom they were wrong. Kennedy was on the phone not talking to Knapp. One man started to leave but they all ran into eachother (sic) in the hall outside her bedroom. She tried to run out a side door but one man got her with an asp.[2] She didn't stay down and there was a fight. The 2nd man had an axe handle he from (sic) her bedroom instead of his asp. When it was over he threw it over the fence. THey (sic) had to leave quickly because she had been on the phone. They couldn't finish arranging the house. They also left behind one guys asp. They tried to go back for it but the cops were already there. 1 man left and the other man and woman stayed waiting for a decision about Knapp. word (sic) came to walk away from knapp (sic) but they stayed and the next night walked back into the house and got the asp. They also found the axe handle they used and got rid of it. Knapp was not killed by any of the men or woman. This wasn't one crazed man with a golf club. The people you're looking for are major prescription drug suppliers in phx (sic) connected to mexico (sic) canada (sic) and some other off shore operation. That's all I can say."

The second e-mail that the sender sent to John Sears six minutes after he/she sent the first one was addressed only to "john.sears@azbar.org". The heading reads "forward". The contend reads:

"please (sic) forward it to the prosecutors, I don't have their e-mail and they need to read it more than anyone."

I sent a subpoena to Google requesting subscriber information, IP addresses, login information, and other related information about the e-mail address of a4b9c4d5@gmail.com on June 19, 2009. Google responded to the subpoena by supplying the listed information:

The address of a4b9c4d5@gmail.com was enabled for use as Gmail and Talk. The name associated with the address is "Anonymous Anonymous". The account was created on June 19, 2009 at 9:04:26 PM GMT, which was 2:04:26 PM in Arizona (just before the e-mails were sent to John Sears and Joe Butner). Google also provided me with the IP address of the computer that sent the messages.[3]

I determined that the IP address was used by Qwest Communications on the date and time of the e-mails being sent to the attorneys. I sent a subpoena to Qwest requesting information about the IP address and where it was located. Qwest responded to the subpoena and provided the listed information:

The IP address is a DSL-Static Customer (originally, Qwest believed that it was a Dynamic Customer, but advised me verbally that the IP address was actually Static). The User ID is "netlans1001", the name is "NETLANS", there is no registered e-mail address, and the BTN (phone number) is "6024945450". The location of the computer on the date

[2] Asp is the brand name of one of the first collapsible batons used by police.
[3] Copy of Google response in Yavapai County Attorney's Office file.

the two e-mails were sent was at NETLANS, 3131 East Thunderbird Road, Suite 53, in Phoenix. The billing information for the account went to Joseph Clarke at the same address in Phoenix.

I was able to determine that the location in Phoenix is the Netlans Internet Café. The Café is located about a quarter mile off SR51, just south of the Loop 101 in Phoenix in a corner shopping center at 32nd Street and Thunderbird. I also did a Google check of internet cafes in Phoenix and also in Arizona, and each time I ran the query, I ended up with ten total cafes listed and the first one listed as being the Netlans Internet Café at 3131 East Thunderbird Road in Phoenix. With the exception of Ricks Cyber Café in Sedona and the Extreme Computer Center in Anthem, the Netlans Internet Café would be the closest and easiest Internet café to locate and access for a person in Yavapai County.

Detective Bill Hobbs and I contacted and interviewed the owner of the Netlans Internet Café, Joseph Clarke, on Friday, July 10, 2009 (three weeks after the e-mail was sent to John Sears). We met Mr. Clarke at the café shortly after it opened at 1:00 PM.

Mr. Clarke said that he is the owner and full-time employee of the Café. He said that he was working the entire day, from the time the Café opened at 1:00 PM, on June 19, 2009. Mr. Clarke also confirmed that "netlans1001" is one of the computer terminals that he rents out to customers. He described the terminal as being "Number 10", which was located at the far south end of the café between terminals nine and eleven.

Mr. Clarke was able to provide us with a printout of all 57 customers who used his café on June 19, 2009. Of the 57 customers, 47 were regular customers for which Mr. Clarke was able to provide their sign-on names. Five of the listed "customers" were actually tests that were done on various terminals. The remaining five customers were walk-in customers who were unknown to Mr. Clarke. The five, unknown, walk-in customers were listed as "guest", along with the computer terminal that the customer used and the totals number of minutes that the customer used the computer terminal. One of the unknown "guests" was using Terminal #10 when the e-mails were sent to John Sears and Joe Butner. The "guest" who used Terminal 10 was billed $4.00 for one hour's use of the computer and paid in cash, so there was no paper trail for the payment.

Mr. Clarke provided us with 155 pages of printout that documented the activity of all of the computer terminals in his Café on June 19, 2009. Beginning on page 97 of the daily printout, I located the activity for Terminal 10. The operator of Terminal 10 first signed on at 14:00:28 (2:00 PM and 28 second). There was no one using any of the terminals directly next to or around Terminal 10 while the sender who contacted John Sears was using Terminal 10.

The first thing that the sender did when he/she activated Terminal 10 was to go to the Google website, activate the Gmail option, and create the bogus Gmail account that was used to send e-mail to John Sears and Joe Butner. The user then spent the next 20 or so minutes trying to locate an e-mail address for Joe Butner. The user searched numerous sites in an attempt to locate an address for Joe Butner, including sites for the Arizona Bar,

the Yavapai County Attorney's Office, Attorneys, and even sites through the Google search engine that specialize in locating people. After about a half hour of searching, the user attempted for a few minutes to locate an e-mail address for Mark Ainley and even an e-mail address for Sheila Polk. With no success finding a similar e-mail address for either attorney Ainley or Polk, the user tried again to locate an e-mail address for Joe Butner. At no time during the 42 minutes of using Terminal #10 did the user ever attempt to locate an e-mail address for John Sears. After failing to locate an e-mail address for Joe Butner, the user sent his/her first e-mail to John Sears at his correct e-mail address at the Arizona State Bar, and to Joe Butner at an incorrect address at the Arizona State Bar. It appeared that the sender substituted "Joe Butner" for "John Sears" using the Arizona State Bar's e-mail format, and attempted to send the e-mail to both John Sears and Joe Butner.

When the message of non-deliverability was returned to the sender concerning Joe Butner's incorrect e-mail address, the sender sent the second, shorter message to John Sears instructing him to forward the first message to "the prosecutor", Joe Butner.

Attorney John Sears suspected that a local defendant named Thomas Price Nichols was the person who may have sent the e-mail from the Internet café. On August 3, 2009, Detective Mike Sechez showed driver's license photos and booking photos of Thomas Nichols to Mr. Clarke at the Netlan's Internet Café, and Mr. Clarke said that, without question, he had never seen Thomas Nichols before, and Nichols was not the person who was in his Café on June 19, 2009.

On July 21, 2009, Attorney John Sears arranged for me to interview his client, Steven DeMocker, at the Yavapai County Attorney's Office in Prescott. Present during the interview were Steven DeMocker, Attorney John Sears and his investigator Richard Robertson, Deputy County Attorney Joe Butner, Yavapai County Attorney's Office Detective James Jarrell, and me, Randy Schmidt. Steven DeMocker agreed to talk only about the voice in the vent and the e-mails that were sent to John Sears and Joe Butner, and the Yavapai County Attorney's Office made no promises or agreements related to prosecution or further investigations with Mr. DeMocker or his attorney.

I began the interview in the Hastings Room by asking Mr. DeMocker to read the notes that he had taken when the voice in the vent was providing him with information about Carol Kennedy's murder. Mr. DeMocker agreed to read the notes. He apologized for the quality of the handwriting, but said that he was writing rapidly as the voice in the vent spoke, and he was actually standing on the toilet in his cell and trying to write as he listened through the air vent that is located above the toilet.

Mr. DeMocker said that he was sitting on his bunk in his cell in the evening of Tuesday, May 19, 2009. It was sometime after the 4:00 PM meal at the jail, but he was not sure of the exact time. He said that someone called his name (Steve) through the vent in the cell. Mr. DeMocker said that inmates regularly converse with one another through the ventilation system. He said that there are 15 cells in each dorm in the Camp Verde jail,

and each dorm had a ventilation system that runs to vents in every cell in the dorm. He said that the vents are located above the toilets in each cell.

Mr. DeMocker said that he was on the upper bunk in his cell and he immediately stood up on the toilet so he could hear what the voice in the vent was saying to him. At the time that the voice was speaking to him, there were no other inmates in Mr. DeMocker's cell. Mr. DeMocker explained that the cell doors stay open during the day so the inmates can go out into the common open area within the dorm. They have contact with each other inside the dorm, but not with inmates in other dorms. Mr. DeMocker said that it is also possible for inmates to go into cells where they are not usually housed because all of the doors are left open. He was positive that the person who was speaking to him was an inmate, and due to the sound of the voice, he felt that the person was in one of the cells directly above his. DeMocker was in Cell #1 in Dorm N and he felt that the person who was speaking to him through the vent was in either Cell #8 or Cell #9 in Dorm N. Mr. DeMocker said that the voice sounded familiar but he was not sure who the person was who was speaking to him.

The voice told DeMocker that he had a message from someone who knew what had happened to DeMocker's ex-wife. I asked Mr. DeMocker to actually read the one-page narrative that he started writing for his attorney to explain what the voice in the vent had said, and also the three pages of notes that he took while the voice was speaking to him.

As Mr. DeMocker read his notes I digitally recorded what he said. I recorded the entire interview, as did Mr. DeMocker's defense team, and I maintained a digital copy of the interview in the case file. I did not transcribe verbatim what Mr. DeMocker read from his notes, but rather I paraphrase in this report what he related to me during the interview.

The person who spoke through the vent told Mr. DeMocker that he had a message from someone who knew what happened to his ex-wife (Carol Kennedy). The information came from someone in a different dorm who was a cellmate of a "buddy" of the person who was giving the information to DeMocker via the air vent. The person who had the information gave it to his cellmate to give to his buddy who was in the same dorm as DeMocker with the instructions that the voice in the vent could give the information to DeMocker after the original source said he could tell DeMocker.

The voice told DeMocker that he originally got the information three weeks before he disclosed it to DeMocker on May 19th, 2009. The voice said that he was going to read the information from something that he had been given by his buddy, and he told DeMocker to write down the information as the voice read it.

The voice told DeMocker that his ex-wife was killed by two guys from Phoenix. She found out something that a friend of Jim Knapp's was doing with people in the Valley. The author does not know the guy's name, but he and Jim Knapp knew each other from somewhere else. According to the voice in the vent, the guy still lives in the location where he and Knapp met, but he travels to Arizona (indicating that the source lives in another state). The guy and Jim Knapp were working on a prescription drug deal with

people in Phoenix, and the guy actually gave Knapp a job working with the people who were doing the prescription drug deal. The author said that Knapp told Carol Kennedy (the voice in the vent never used Carol Kennedy's name, but always referred to her as DeMocker's "ex-wife") something and was "acting like a player". The guy (friend of Knapp) had to tell the people in Phoenix that Carol Kennedy had found out by accident about the drug deal (he did not tell them that Knapp had actually told Carol Kennedy about the deal). The people in Phoenix told the guy that the deal was off temporarily, and he was to "change out Knapp's part" and get someone else to help with the drug deal instead of Knapp. He said that the deal would go on as planned in a few months without Knapp. He said that Knapp had nothing to do with the deal after that time.

The voice said that nothing else became of the deal and the guy went home (wherever that is). The next thing the guy knew was that Carol Kennedy was killed. The guy was very worried, but the people in Phoenix said that they were not involved in the murder and Knapp claimed that he was sure "it was you" (DeMocker). The guy wasn't sure who killed Carol Kennedy, but when "the cops arrested you (DeMocker) he stopped worrying and went home." The guy came back to Arizona to do another deal but heard from someone else he knows in the Valley what really happened to Carol Kennedy. He heard that the "people in Phoenix sent two guys up to do your ex...was supposed to look like a robbery...fucked up and it happened while she was on the phone so they had to take off." The voice said that the people in Phoenix thought it was so funny when "the cops arrested you (DeMocker), the cops fucked it up so bad". The voice said that the cops presumed there was only one guy (suspect) but there should have been, or there were, two sets of prints (from two suspects). The voice said that the cops were wrong when they presumed that the murder weapon was a golf club. He said the murder weapon was a "tool handle that they found in the house, and they just left it behind." He said that "the cops completely missed it." He also said that the killers "fucked up and left behind the baton they were going to use", and the following night, the killers returned to the house, walked right in and got the baton that they had left behind following the murder.

The voice said that the friend of Knapp, upon finding out that Carol Kennedy was killed because of Knapp, "walks away from the deal in Phoenix" and tells Knapp about the murder and that it was done by the people in Phoenix. He said that "Knapp freaks out" and the guy goes back home. Next he hears is that Knapp is dead. The guy does not know if Knapp actually killed himself, but he has decided not to return to Arizona any time soon. The voice then said to DeMocker, "good luck with your case. A buddy of mine got fucked over by the cops and went to DOC for something the cops knew he didn't do so they wouldn't look stupid. I heard you were a good guy. Good luck."

After Mr. DeMocker read his notes, we talked about the other inmates, the vents, the voice in the vent, and the e-mails that were sent to John Sears for about an hour and a half. Mr. DeMocker said that he does not usually speak through the vents, but he has listened to his cell mates communicate through the vents and to other inmates in the dorm communicate through the vents, and based on the level of sound while the voice was speaking to him, he guessed that the voice was coming from one of the two cells above him. Mr. DeMocker said that he was not sure what cell the voice was coming from, and

he has no way of knowing if the person was speaking from his own cell or was in someone else's cell while the doors were left open.

Steven DeMocker said that the person who spoke to him through the vent was not talking in a normal voice. He said it was like a stage whisper. He said that he thought he recognized the voice, but he did not know the person's name and the guy is no longer in the dorm. He said he did not have the feeling that the person was trying to disguise his voice, but the guy was speaking quietly like in a "stage whisper".

Originally, John Sears told me that he thought the voice was that of Danny Thomas Fields. I had checked the jail records and determined that Danny Fields had been released from jail on May 18, 2009, the day before the voice in the vent episode. DeMocker told me at one time that he thought it might be Danny Fields, but he was sure now that it was not Fields. He said that Danny Fields was in Cell #8 directly above Mr. DeMocker's cell, but he is pretty sure that the voice was not that of Danny Fields because he is sure that the person spoke to him through the vent on the evening of May 19th.

Steven DeMocker told me that his attempts to remember names are not very good because he does not know that many names of the other inmates. I confirmed with Mr. DeMocker that the voice in the vent was getting the information second or third hand and was not directly involved with the information. DeMocker responded, "so he says". Mr. DeMocker said that the way he interpreted the information was that it was coming from an inmate in a different dorm, who had a friend in DeMocker's dorm. The source passed the information to his cell mate so he could pass it to his buddy in Dorm N, and that person could pass it to Steven DeMocker.

Steven DeMocker pointed out that he was suspicious that all of the anonymous sources were actually people other than the voice in the vent. He pointed out that the voice stated many times, what people involved in the crime of drug dealing were thinking, and he had the impression that the voice in the vent may have been directly involved in the deal and may have been Jim Knapp's "buddy". He pointed out that the voice in the vent said he did not know the guy's name (friend of Knapp) but he seemed to know what the guy was thinking, according to his statements. He said that the anonymous third party part of the story "did not ring true".

Mr. DeMocker told me that he was uncomfortable naming names of the person he suspected of being the voice in the vent. He said he could see the person's face but he didn't remember the guy's name. He did think he had a pretty clear picture of who the inmate is who was speaking to him through the vent. He told me that it actually could have been one of a couple of inmates who were in jail with him at the time.

Mr. DeMocker said that the person he was thinking of was gone from the Dorm within a week of the communication in the vent. He described him as having dark skin and having a jail-house goatee.

Mr. DeMocker told me that he always suspected that Jim Knapp had something to do with Carol Kennedy's murder, but he never believed that Knapp was the type of person who would actually kill Carol. He said that he did not know Knapp well and only had one complete conversation with him. Mr. DeMocker said that his biggest concern is that he does not believe that Jim Knapp would know enough about a major drug operation to warrant killing him or Carol Kennedy.

I asked Steven DeMocker who all the people were who knew about the conversation with the voice in the vent. He said that no one knew the details of the conversation from the vent except for John Sears. He said that he told no one about the conversation until about two days before the interview with our office after he found out that I would be interviewing him. He said that he very generally told another inmate about Jim Knapp's drug deal. He said that he told the other inmate, who is very knowledgeable about drug deals and other types of possible criminal activity, in an attempt to get the other inmate's perspective on the whole situation involving Jim Knapp. Mr. DeMocker said that he told the other inmate that if he could ever come up with any information about the crime, there would be a reward for him for the information. The inmate told DeMocker that if he got out of jail he would try to get information. Mr. DeMocker said that the inmate is still in jail, but he is in one of the worker dorms. He reluctantly told me that the other inmate is Mario Caruso, but he asked that I not contact him for fear that DeMocker would be labeled a "snitch". Mr. DeMocker told me that he had disclosed the general information to Mario Caruso about a month before our interview.

Mr. DeMocker said that the only person he ever talked to about the voice in the vent was Mario Caruso. He said that he has no idea who Mario may have spoken to, but DeMocker did not talk to anyone else about what we were discussing, and he did not tell Mario Caruso any of the details that were disclosed by the voice in the vent.

Mr. DeMocker told me that within the two previous days, he told his cellmate, Bobby White, that his defense team had received two anonymous tips about Carol Kennedy's murder. He said that one of the tips had come directly to him (DeMocker), but he did not disclose that he heard the information, or the tip, from another inmate.

Mr. DeMocker said that no one on the outside, to his knowledge, knows about the two anonymous communications. He said that he has not told either of his daughters anything, but he has "intimated to Renee [Girard (his girlfriend)] that we are investigating something". He said that he has given no details of the communications to anyone other than John Sears.

I asked Steven DeMocker about the reference to the "tool handle" in the voice in the vent's explanation, and the reference to the "axe handle" in the e-mail to John Sears. Mr. DeMocker told me that he believed that they both referred to a splitting maul handle that he and Carol kept in their bedroom for protection since the time they lived in Vermont. He said that the handle was never used on a splitting maul, but it had been kept in the master bedroom for many years and did not look like a new handle. He told me that he and Carol did not want to keep guns in the house when the children were little, so

he kept the maul handle for protection. He estimated that they had kept the handle in the bedroom for about 25 years. He said that the last time he saw the maul handle, it was in Carol's bedroom next to the bed.

Steven DeMocker told me several times that he never mentioned the voice in the vent to anyone other than John Sears, so he never asked either of his daughters if they knew whether or not the maul handle was still in the bedroom just prior to the murder.

I showed Steven DeMocker the e-mails that the anonymous person had sent to John Sears from the Internet café in Phoenix. John Sears had previously told me that Steven DeMocker had no knowledge of the e-mails until John showed them to him. Upon seeing the e-mail for the first time in the visitation room at the jail, Steven DeMocker became visibly upset and started to cry when he read the description of the murder of Carol Kennedy. I showed the e-mails to Steven DeMocker so I could ask him questions about them. As soon as Steven DeMocker saw the e-mail and read it, he became very emotional and began to cry. There was a short break in the interview while he composed himself.

Steven DeMocker told me that he was disturbed because the person who authored the e-mail seemed to know the inside of Carol Kennedy's house, based on the description in the e-mail. I agreed, and told him that that was one of our biggest concerns about the e-mail; the fact that whoever authored the e-mail did seem to have some specific information, not only about the inside of the house, but about the actions of the people in the house before, during and immediately following the murder.

Mr. DeMocker told me that he was positive that the voice in the vent never mentioned a female. He said that the voice specifically mentioned "two guys" and not two men and a woman. He also told me that the only person to whom he mentioned the e-mail or its contents, other than to his defense team, was to his cellmate, Bobby White.
Mr. DeMocker said that he did not mention the e-mail to Mario Caruso because Mario had already left the dorm when DeMocker learned of the e-mail. He also told me that neither of his daughters was aware of the e-mail. Mr. DeMocker was sure that he had only spoken about the e-mail to Bobby White, and that was only to tell him that one "tip" had come to him in the form of an e-mail and one tip had come to him from inside the jail.

Steven DeMocker told me that other than the long statement from the voice in the vent on May 19th, no one has mentioned any information to him about the murder of Carol Kennedy, and there have been no follow-up conversations or information from the voice in the vent. He said that many times other inmates have speculated on what happened and have asked him to speculate on what happened to Carol Kennedy, but no one other than the voice in the vent has provided any specific information about the murder.

I asked Mr. DeMocker if either he or the other inmates had speculated along the same lines as the information that was provided by the voice in the vent, or if any of his speculations were similar to the information that was provided by the voice in the vent, or

if he and/or the other inmates had spoken about the same or similar issues that were presented by the voice in the vent. Attorney John Sears would no let Mr. DeMocker answer my question.

Steven DeMocker said that many of the inmates liked to speculate about the murder of his ex-wife, and some inmates, such as Danny Fields, openly admitted that they had been following the case closely. Danny Fields told DeMocker that he followed the case closely and he showed great interest in the case. I checked Danny Fields' records at the jail and determined that he was released from jail on May 18th, the day before the voice in the vent disclosed the information to Steven DeMocker. (Danny Thomas Fields was housed in Cell 8 in Dorm N before his release on May 18th, 2009).

Mr. DeMocker admitted that the entire "thing" could be a fabrication because he was unaware of what people in jail could make up and put together. He said that he was most concerned about the mention of the tool handle, since no one knew about the tool handle being kept in Carol's bedroom. DeMocker said that the only other inmate that he spoke to about this related information, besides Bobby White and Mario Caruso, was Troy Pierce. Troy Pierce was in Cell #15 in N Dorm at the time of the voice in the vent episode, and was released from jail on July 7, 2009. Mario and Troy were housed together in Cell #15 when these incidents occurred, but DeMocker said that neither one of them gave any indication that they knew anything about his case or that they had anything to do with the voice in the vent or the e-mails.

DeMocker said that he never said anything at all about an axe handle (or tool handle) being in Carol's house to Troy or to Mario, or to anyone else. He also said that he and his family cleaned out Carol's house after the murder but before he was arrested. He said that he never noticed whether or not the splitting maul handle was still in the house when it was cleaned out. Mr. DeMocker said that it never occurred to him to even think about the tool handle when he was cleaning the house. He said that the bedroom was a mess and lots of things had been moved around, but he never noticed whether or not the tool handle was still in the house. Mr. DeMocker said that Katie wanted to have her mother's bed mattress, so they took the mattress over to his townhouse. He said that they partially dismantled Carol's bed when they took the mattress, but he never noticed if the tool handle was still under or beside the bed. He said that he did not see the handle, but the fact that he does not remember seeing it doesn't mean that it wasn't there because he has never thought about the tool handle. He told me that he does not remember seeing the tool handle, but he also does not remember that it was specifically not there. He said that its absence did not strike him at the time, and he just can't remember if it was in the house or not.

Steven DeMocker denied having in anyway been responsible for either the voice in the vent or the e-mails, and said that he did not concoct the story in any way. He also said that he has no reason to believe that anyone in his family may have been involved in concocting the stories from the voice in the vent or the e-mails.

Following my interview with Steven DeMocker and John Sears, I contacted detectives from the Phoenix Police Department's Drug Enforcement Bureau, the prescription drug Diversion Unit, and the Drug Enforcement Administration's Arizona Prescription Drug Diversion Task Force. Detectives Tim Taylor and Art Widawski confirmed that neither the Phoenix Police Department nor the DEA had any information on James Knapp or the prescription drug organization that was described in the e-mails or by the voice in the vent.

During the interview, Steven DeMocker said that he had an idea who may have been the voice in the vent, but he did not know the names of all of the inmates in N Dorm. He said that he didn't know anyone's last name, and in some cases, he didn't even know the other inmates' first names.

I got a list of all of the county jail inmates that were in N Dorm on May 18th and May 19th 2009, along with their locations (cell and bed numbers) on both days. I also obtained booking photos for each of the inmates and created a packet that contained each inmate's photo and his first and middle name, but not his last name or his cell location. I provided the packet to Attorney John Sears so he could show the photos to Steve DeMocker during his next attorney-client visit at the jail. John Sears showed the photos to Steven DeMocker on July 31, 2009, and Mr. DeMocker commented as to whether each inmate was a possibility for being the voice in the vent. Mr. Sears took notes on the photos and pages in the packet, and I met with Mr. Sears at his office on August 4, 2009, at which time he disclosed to me what Steven DeMocker had told him about the photos and the possibility for each inmate to be the voice in the vent.

Of the 37 inmates who were in jail with Steven DeMocker on May 19, 2009, Mr. DeMocker identified 13 inmates who he felt were possibly the person who was responsible for being the voice in the vent. Mr. DeMocker originally felt that Danny Fields may have been the voice in the vent, but Danny Fields was released from jail on May 18th, 2009, the day before the voice spoke to DeMocker through the vent.

This portion of the investigation continues.